APPEAL NO. 040586
FILED APRIL 15, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on February 10, 2004. The hearing officer decided that the appellant's (claimant herein) compensable injury of _____, does not extend to include tarsal tunnel syndrome of the right foot; that the claimant had disability from October 17 through October 23, 2002; and that the claimant's average weekly wage (AWW) was $95.96. The claimant files a request for review, arguing that the hearing officer's resolution of the extent-of-injury, disability, and AWW issues should be reversed as being contrary to the evidence. The claimant also argues that the hearing officer was biased against him. The respondent (carrier herein) replies that the decision of the hearing officer is sufficiently supported by the evidence and should be affirmed. The carrier requests we sanction the claimant for comments made in his request for review and in the cover sheet to the copy of the request for review he sent to the carrier.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

We have held that the question of the extent of an injury is a question of fact for the hearing officer. Texas Workers' Compensation Commission Appeal No. 93613, decided August 24, 1993. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given to the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). An appeals-level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

In the present case, there was simply conflicting evidence regarding the extent of the claimant's injury, and it was the province of the hearing officer to resolve these conflicts. Applying the above standard of review, we find that the hearing officer's decision regarding the extent of the claimant's injury was sufficiently supported by the evidence in the record.

Disability is also a question of fact. While the claimant believes that the hearing officer should have found a longer period of disability, we find no legal basis upon which to overturn the hearing officer's factual determinations regarding disability, which were partly based upon his resolution of the extent-of-injury issue.

The claimant challenges the hearing officer's determination of AWW, contending that he presented evidence supporting a higher AWW. Section 408.041(a) provides as follows:

> Except as otherwise provided by this subtitle, the [AWW] of an employee who has worked for the employer for at least the 13 consecutive weeks immediately preceding an injury is computed by dividing the sum of the wages paid in the 13 consecutive weeks immediately preceding the date of the injury by 13.

This is exactly the method the hearing officer used and this was proper. The claimant presented some evidence of a different amount of wages than found by the hearing officer, but amount of wages earned during the 13 weeks prior to the injury presented the hearing officer with a question of fact. Under the standard of review set out above, we have no basis to overturn the hearing officer's factual determination regarding the wages earned by the claimant prior to the injury.

The claimant argues that the hearing officer's adverse factual findings were motivated by bias against him by the hearing officer. The claimant contends that this bias was based upon the fact that the claimant had previously appeared before the hearing officer. We find no bias in the record of the present case and absent such evidence we have no basis upon which to find bias.

The carrier requests we sanction the claimant for making inappropriate comments. We certainly believe that all parties to a proceeding need to treat one another with respect, but our review is limited to the record and to the issues at the hearing. We do not have authority to even consider the sanctions requested by the carrier.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **SERVICE LLOYDS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

JOSEPH KELLEY-GRAY, PRESIDENT
6907 CAPITOL OF TEXAS HIGHWAY NORTH
AUSTIN, TEXAS 78755.

_____
Gary L. Kilgore
Appeals Judge

CONCUR:

_____
Chris Cowan
Appeals Judge

_____
Robert W. Potts
Appeals Judge